



**In The  
Court of Appeals  
Seventh District of Texas at Amarillo**

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No. 07-16-00228-CR

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**EX PARTE DAVID FRANKLIN WEST**

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From the 69th District Court  
Dallam County, Texas  
Trial Court No. 4471; Honorable Ron Enns, Presiding

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July 14, 2016

**MEMORANDUM OPINION  
ON WRIT OF HABEAS CORPUS**

Before QUINN, C.J., and HANCOCK and PIRTLE, JJ.

David Franklin West has two appeals pending in this court: a conviction for possession of more than 400 grams of tetrahydrocannabinol for which he received a sentence of thirty years,<sup>1</sup> and a conviction for possession of more than one gram but

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<sup>1</sup> Appellate cause number 07-16-00137-CR.

less than four of methamphetamine for which he received a sentence of ten years.<sup>2</sup> Both substances fall within Penalty Group 2 and both are felonies.<sup>3</sup>

On June 13, 2016, West filed a *Petition for Writ of Supersedeas to Obtain a Stay By Supersedeas Bond on Appeal Pursuant to Fed. R. Civ. P. 62(d)*. Essentially, he argues that he is “being held unlawfully” because no crime can be shown to have been committed. We construe his filing as presenting an application for a post-conviction writ of habeas corpus and dismiss this proceeding for want of jurisdiction.

It is well established that only the Court of Criminal Appeals possesses the authority to grant relief in a post-conviction habeas corpus proceeding where there is a final felony conviction. *Padieu v. Court of Appeals of Tex., Fifth Dist.*, 392 S.W.3d 115, 117 (Tex. Crim. App. 2013) (orig. proceeding) (*per curiam*). Intermediate appellate courts play no role in post-conviction writs of habeas corpus. *Ater v. Eighth Court of Appeals*, 802 S.W.2d 241, 243 (Tex. Crim. App.); *In re McAfee*, 53 S.W.3d 715, 718 (Tex. App.—Houston [1st Dist.] 2001, orig. proceeding).

Furthermore, even if we were to construe West’s pleading as seeking an appeal bond, he is not eligible. Article 44.04(b) of the Texas Code of Criminal Procedure provides that a defendant may not be released on bail pending the appeal from any felony conviction where the punishment equals or exceeds ten years confinement. TEX. CODE CRIM. PROC. ANN. art. 44.04(b) (West Supp. 2015). West’s sentences exclude him from pursuing an appeal bond.

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<sup>2</sup> Appellate cause number 07-16-00138-CR.

<sup>3</sup> TEX. HEALTH & SAFETY CODE ANN. §§ 481.103(a)(1), 481.116(c), (e) (West Supp. 2015).

Accordingly, West's purported application for a post-conviction writ of habeas corpus is dismissed for want of jurisdiction.

Per Curiam

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